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No. 08-644

In The

Supreme Court of the United States

YOLANDA G. MIÑAGORRI,

Petitioner,

v.

ARCHDIOCESE OF MIAMI, INC.,

Respondent.

On Petition For Writ Of Certiorari To The District Court Of Appeals, Third District, State Of Florida

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the First Amendment deprives a trial court of jurisdiction to consider an employment related lawsuit brought by a "ministerial employee" against a religious employer, even when the dispute is undisputedly secular and does not involve any religious doctrine or matter.

PARTIES TO THE PROCEEDINGS BELOW

The parties in the District Court of Appeals were as follows:

Defendant-appellant: Archdiocese of Miami, Inc., a Florida not-for-profit corporation.

Plaintiff-appellees: Yolanda G. Miñagorri

Parent and Subsidiaries: None

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OPINIONS BELOW

Minagorri v. Archdiocese of Miami, Inc., 985 So.2d 1086 (Fla. 2008), reprinted in the Appendix, *infra*, at App. 10; *Archdiocese of Miami, Inc. v. Minagorri,* 954 So.2d 640 (Fla. 3d DCA 2007) reprinted in the Appendix, *infra,* at App. 1.

JURISDICTION

The District Court of Appeals Decision was reached on March 14, 2007 at App. 1; the motion for rehearing of this decision was denied on May 18, 2007 at App. 1. The Florida Supreme Court denied review on July 3, 2008 at App. 10. This Court has jurisdiction to review this matter under 28 U.S.C. § 1257(a).

STATUTES INVOLVED

§§ 448.101-.105, Fla.Stat. (Florida's Private Sector Whistleblower Act).

STATEMENT OF THE CASE

This case comes to the Court from the issuance of a writ of prohibition by the District Court of Appeals, which determined that the trial court lacked jurisdiction to proceed. Since the decision was based on a lack of jurisdiction, the allegations of the complaint

must be treated as true and were so treated by the court below. App. 1-2.

FACTS

In August 2005, Petitioner, Yolanda M. Miñagorri, while the principal[1] of St. Kevin Catholic School, was assaulted and battered when Father Jesus Saldaña, her immediate supervisor. App. 1. When Miñagorri, complained to the Respondent, Archdiocese of Miami, Inc., about Father Saldaña's behavior, the Archdiocese retaliated by terminating her employment. App. 2.

In her complaint, Miñagorri makes a claim under §§ 448.101-.105, Fla.Stat. (Florida's Private Sector Whistleblower Act), which prohibits employers from taking retaliatory action against employees who object to or refuse to participate in activities, policies or practices of the employer which are "in violation of a law, rule, or regulation." § 448.102(3), Fla.Stat. App. 2, 13. The District Court of Appeals, ruled that the trial court lacked subject matter jurisdiction to entertain this claim under the First Amendment's bar against secular court review of religious policy and

[1] The parties below agreed that as the principal of this religious school, Miñagorri was responsible for the spiritual guidance of the students and therefore would necessarily qualify as a "ministerial employee" under any reasonable definition of such term. App. 5.

administration. App. 2. The District Court of Appeals did not engage in any kind of analysis concerning whether any religious issues were actually involved in this matter, nor did the court require the Archdiocese to proffer any religious justification for the actions. Rather, the court ruled that the maintaining of the case itself was barred by the First Amendment. App. 2.

REASONS TO GRANT THE WRIT

This case involves a crucial First Amendment issue that directly affects the day-to-day decisions of religious organizations and their clergy, the scope of which has split lower courts and which this Court has never addressed. It pits a claim to complete autonomy from the law for religious entities against the right of employees not to be retaliated against for reporting criminal assault and battery. In the past thirty years, a number of federal appellate and state supreme courts have limited the reach of employment related statutes, when applied to religious employers. Most often these decisions deal with Title VII, the federal anti-discrimination law that governs private employers, 42 U.S.C. § 2000e et seq. Of course, Title VII, explicitly limits its application with regards to religious employers. 42 U.S.C. § 2000e-1(a) No similar express statutory limitation exists with regard to §§ 448.101-.105, Fla.Stat. (Florida's Private Sector Whistleblower Act). App. 12-15.

Starting with the *McClure v. Salvation Army,* 460 F.2d 553 (5th Cir. 1972), a significant number of federal appellate and state supreme courts have read the First Amendment to limit judicial review of a religious entities' employment decisions even where those decisions may otherwise impermissibly discriminate against their clergy. Many of these lower court decisions do not require that the employment action involve a religious doctrine or belief.

Despite the thirty-year development of this First Amendment doctrine with wide effect, this Court has yet to take a case addressing the judicially created "ministerial exception". This Court has had several opportunities to hear such matters but has consistently denied certiorari. *See, e.g., Tomic v. Catholic Diocese of Peoria,* 442 F.3d 1036 (7th Cir. 2006), *cert. denied,* 127 S. Ct. 190 (2006); *Starkman v. Evans,* 198 F.3d 173 (5th Cir. 1999), *cert. denied,* 531 U.S. 814 (2000); *Young v. N. Ill. Conf. of United Methodist Church,* 21 F.3d 184 (7th Cir. 1994), *cert. denied,* 513 U.S. 929 (1994); *Rayburn v. Gen. Conf. of Seventh Day Adventists,* 772 F.2d 1164 (4th Cir. 1985), *cert. denied,* 478 U.S. 1020 (1986); *McClure,* 460 F.2d 553, *cert. denied,* 409 U.S. 1050 (1972). The result is that there is significant confusion among courts regarding the constitutional necessity of such a "ministerial exception," and, if it is constitutionally required, its appropriate scope.

In this case, the District Court of Appeals of Florida, ruled that the "ministerial exception" created a jurisdictional bar to a trial court's hearing an action

concerning a religious entity's employment decision concerning its ministerial employee. App. 2. This is in stark contrast to other decisions such as the decision of the New Jersey Supreme Court in *McKelvey v. Pierce,* 800 A.2d 840 (N.J. 2002) where the court rejected the approach taken in the instant case and required a careful issue by issue review of the matters asserted in a complaint to determine if then court's consideration of such issues would impermissibly entangle the court in religious doctrine. Therefore, as it presently stands, the action asserted by the Petitioner below, which is barred in the State of Florida, could have proceeded to such a review in the State of New Jersey. As it is unlikely that the Catholic Church considers criminal assault and battery a part of its religious doctrine, Miñagorri's claim would most likely survive such review and proceed.

I. THERE IS SIGNIFICANT UNCERTAINTY REGARDING THE EXISTENCE AND SCOPE OF A "MINISTERIAL EXCEPTION" AMONG FEDERAL APPELLATE COURTS AND STATE SUPREME COURTS

There is presently a split as to whether the "ministerial exception" requires absolute immunity for the religious employer's decisions concerning its clergy. In general, courts have taken the following approaches:

(1) **The following have recognized a ministerial exception that grants religious employers**

absolute immunity from civil rights laws, *see, e.g., Petruska v. Gannon Univ.*, 462 F.3d 294 (3d Cir. 2006) (holding that the First Amendment requires absolute immunity for religious entities from any claim of discrimination or retaliation under Title VII brought by clergy); *Alicea-Hernandez v. Catholic Bishop of Chi.*, 320 F.3d 698 (7th Cir. 2003) (holding that the ministerial exception precludes any inquiry into reasons behind church's ministerial employment decision). *See also Tomic v. Catholic Diocese of Peoria*, 442 F.3d 1036 (7th Cir. 2006); *Werfi v. Desert Sw. Annual Conf. of United Methodist Church*, 377 F.3d 1099 (9th Cir. 2004); *Gellington v. Christian Methodist Episcopal Church, Inc.*, 203 F.3d 1299 (11th Cir. 2000); *Starkman v. Evans*, 198 F.3d 173 (5th Cir. 1999); *Combs v. Cent. Tex. Annual Conf. of the United Methodist Church*, 173 F.3d 343 (5th Cir. 1999); *Bell v. Presbyterian Church*, 126 F.3d 328 (4th Cir. 1997); *E.E.O.C. v. Catholic Univ. of Am.*, 83 F.3d 455 (D.C. Cir. 1996); *Young v. N. Ill. Conf. of United Methodist Church*, 21 F.3d 184 (7th Cir. 1994); *Scharon v. Saint Luke's Episcopal Presbyterian Hosp.*, 929 F.2d 360 (8th Cir. 1991);

(2) **The following have recognized a ministerial exception that still permits the application of the civil rights laws in certain circumstances**, *see Bollard v. Cal. Province of the Soc'y of Jesus*, 929 F.2d 944 (9th Cir. 1999) (allowing sexual harassment claim where defendant was neither exercising its constitutionally protected prerogative to choose its ministers nor embracing the

behavior at issue as a protected religious practice). *See also Hankins v. Lyght*, 441 F.3d 96 (2d Cir. 2006); *Curay-Cramer v. Ursuline Acad. of Wilmington, Del., Inc.*, 450 F.3d 130 (3d Cir. 2006); *Shaliehsabou v. Hebrew Home of Greater Wash, Inc.*, 363 F.3d 299 (4th Cir. 2004); *Elvig v. Calvin Presbyterian Church*, 375 F.3d 951 (9th Cir. 2004) (*reh'g en banc denied*, 397 F.3d 790 (9th Cir. 2005)); *Merkos L'Inyonei Chinuch, Inc. v. Otsar Sifrei Lubavitch, Inc.*, 312 F.3d 94 (2d Cir. 2002); *Little v. Wuerl*, 929 F.2d 944 (3d Cir. 1991); *Natal v. Christian & Military Alliance*, 878 F.2d 1575 (1st Cir. 1989); *Rayburn v. Gen. Conf. of Seventh Day Adventists*, 772 F.2d 1164 (4th Cir. 1985); *United States v. Woloszczuk*, 458 F.2d 1255 (1st Cir. 1972); *McKelvey v. Pierce*, 800 A.2d 840 (N.J. 2002).

A. There Is a Split Among Federal Appellate Courts and State Supreme Courts That Have Recognized a "Ministerial Exception" to Title VII Over Whether the First Amendment Bars a Court from Examining the Religious Motivation Behind a Religious Employer's Decision Regarding Clergy Employees

There is a split within the federal circuits and the state supreme courts on the issue whether courts may look behind a religious organization's employment decision when clergy allege invidious discrimination or retaliation in violation of employment laws. A minority of courts have held that it is appropriate for courts to inquire whether the employment

decision was related to a religious belief of the organization. In these cases, courts have reasoned as follows: "The First Amendment should not require that churches become sanctuaries for sexual harassment by those who act outside of church doctrine . . . our religious institutions [must] honor their secular obligations not to sexually harass those who have been called to become ministers of their faiths." *Elvig v. Calvin Presbyterian Church,* 375 F.3d 951, 969 (9th Cir. 2004) (minister's sexual harassment and retaliation claims go forward because church offered no religious justification for treatment of minister); *see also Bryce v. Episcopal Church in the Diocese of Colo.,* 289 F.3d 648, 657-658 (10th Cir. 2002) (holding ministerial exception to Title VII does not extend to purely secular decisions, but church could not be held liable for sexual harassment in this case, because remarks were made as part of an ecclesiastical dispute); *Bollard v. Cal. Province of the Soc'y of Jesus,* 196 F.3d 940, 947-948 (9th Cir. 1999) (Jesuit novice's sexual harassment claim could go forward where church provided no doctrinal or free exercise justification for its alleged actions); *McKelvey v. Pierce,* 800 A.2d 840, 857-859 (N.J. 2002) (sexual harassment is not based in religious doctrine or inherent in church administration and, therefore, Title VII action, if timely filed, could have gone forward and holding that former seminarian's suit for breach of contract and tortious interference with vocation was allowed to proceed); *see also Longo v. Regis Jesuit High Sch. Corp.,* No. 02-cv-001957-PSF-OES, 2006 U.S. Dist. LEXIS 4142, at *18-19 (D. Colo. Jan. 25, 2006)

(analogizing from Title VII cases, ministerial exception does not apply to disabled teacher's claim for discriminatory discharge under Americans with Disabilities Act, which can go forward in part because no religious justification was offered for the termination).

Other courts have held that the First Amendment precludes courts from looking behind a religious organization's employment decision regarding clergy, despite an otherwise sufficient claim under employment laws. *Gellington v. Christian Methodist Episcopal Church, Inc.*, 203 F.3d 1299, 1304 (11th Cir. 2000) ("[T]he Free Exercise and Establishment Clauses of the First Amendment prohibit a church from being sued under Title VII by its clergy" on claims involving sexual harassment and retaliation); *Rayburn v. Gen. Conf. of Seventh Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985) (ministerial exception bars Title VII gender and racial discrimination claims where the employment decision "involve[s] the church's spiritual functions."); *Ajabu v. Saint James United Methodist Church*, No. 3:06-cv-00009, 2006 U.S. Dist. LEXIS 55014 (D. Ga. 2006) ("Ajabu's [Title VII racial] employment discrimination claims fall squarely within the types of claims the ministerial exception protects and from which this Court is prohibited from interfering."); *Bogan v. Miss. Conf. of the United Methodist Church*, 433 F. Supp. 2d 762 (D. Miss. 2006) (pastor's Title VII race discrimination claim dismissed as barred by the ministerial exception); *Rockwell v. Roman Catholic Archdiocese*, No. 02-239-M, 2002

DNH 195, *8 (D. N.H. Oct 30, 2002) (plaintiff's Title VII gender-based discrimination claims dismissed for failure to state a claim because "the so-called 'ministerial exception' . . . generally speaking, provides that state and federal anti-discrimination laws are not applicable to the employment relationship between a church and its ministers or clergy."). *See also Rosati v. Toledo,* 233 F. Supp. 2d 917, 922 (N.D. Ohio 2002) (ministerial exception serves as a bar to claims under the Americans with Disabilities Act where nun was let go for health reasons).

Under the First Amendment, it is settled doctrine that religious belief is absolutely protected. *Cantwell v. Connecticut,* 310 U.S. 296, 303 (1940) (the "freedom to believe . . . is absolute . . . "). *See also Employment Div. v. Smith,* 494 U.S. 872, 894 (1990) ("Under our established First Amendment jurisprudence, we have recognized that the freedom to act, unlike the freedom to believe, cannot be absolute.").

In contrast, it is equally well established that conduct or action can be regulated even when it is religiously motivated. For example, this Court reiterated in *Employment Division v. Smith* the principle that "Our cases do not at their farthest reach support the proposition that a stance of conscientious opposition relieves an objector from any colliding duty fixed by a democratic government." 494 U.S. at 882 (internal quotations omitted) (quoting *Gillette v. United States,* 401 U.S. 437, 461 (1971)). The First Amendment simply has not been an impregnable barrier to regulation of religious entities' actions.

The absolute immunity theory is at odds with the settled doctrine under the First Amendment's Religion Clauses that permits the examination of the sincerity or bona fides of a claim allegedly based on religious belief. There is no reason under existing First Amendment doctrine to forbid such an inquiry in the employment law context and this court has held as much. In *Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619 (1986) this court reversed the decision of the Court of Appeals for the Sixth Circuit ordering that the Ohio Civil Rights Commission be enjoined from investigating a discrimination complaint brought by a teacher who had been discharged by a religious school. This court held "[T]he Commission violates no constitutional rights by merely investigating the circumstances of [the employee]'s discharge in this case, *if only to ascertain whether the ascribed religious-based reason was in fact the reason for the discharge*." *Dayton,* at 628. (Emphasis supplied)

Not coincidentally, there is also an emerging split on whether ministerial exception claims present a jurisdictional bar to judicial consideration of employment discrimination claims by clergy. The Court of Appeals for the Second Circuit has recognized this split holding:

> The circuits have, however, taken different approaches in their application of the ministerial exception. Four circuits have treated the exception as an affirmative defense that can be raised on a motion to dismiss pursuant to Rule 12(b)(6). *See, e.g., Petruska,*

> 462 F.3d at 302; *Bryce,* 289 F.3d at 654; *Bollard v. Cal. Province of the Soc'y of Jesus,* 196 F.3d 940, 951 (9th Cir.1999); *Natal,* 878 F.2d at 1578. Two circuits have construed the ministerial exception as jurisdictional in nature and an appropriate ground for a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1). *See, e.g., Hollins,* 474 F.3d at 225; *Tomic,* 442 F.3d at 1038. And two circuits have treated the exception as a command to interpret Title VII not to apply to claims between a church and its ministers. *See, e.g., Gellington,* 203 F.3d at 1302-04; *McClure v. Salvation Army,* 460 F.2d at 560 (5th Cir.1972); *cf. Hankins,* 441 F.3d at 117-18 (Sotomayor, J., dissenting).

Rweyemamu v. Cote, 520 F.3d 198, 206, Footnote 4 (2d Cir. 2008).

See also Brazauskas v. Fort Wayne-S. Bend Diocese, 796 N.E.2d 286 (Ind. 2003) (Ministerial exception does not create a jurisdictional bar but rather is an affirmative defense that may entitle a party to summary judgment.)

B. The Lower Courts' Creation of a "Ministerial Exception" to Employment Laws Has Led Many to Ignore Supreme Court Religion Clause Precedent, Leading to Confusion and a Patchwork of Unpredictable First Amendment Doctrine

The lower courts' "ministerial exception" theories are purportedly derived from the Free Exercise and

Establishment Clauses, but typically have been crafted very broadly. As the concept of the "ministerial exception" developed over the decades, without this Court's guidance, the lower courts either ignored crucial Supreme Court precedents or distorted their holdings.

Some courts have disregarded this Court's Free Exercise jurisprudence, especially its 1990 decision in *Smith*, 494 U.S. 872, while others have overlooked this Court's clear statements that religious accommodation can go too far and, thereby, violate the Establishment Clause. *See, e.g., Smith*, 494 U.S. at 913 ("[T]o say that a nondiscriminatory religious-practice exemption is permitted, or even that it is desirable, is not to say that it is constitutionally required, and that the appropriate occasions for its creation can be discerned by the courts."); *see also Texas Monthly, Inc. v. Bullock*, 489 U.S. 1, 17 (1989) ("Because Texas' sales tax exemption for periodicals promulgating the teaching of any religious sect lacks a secular objective that would justify this preference along with similar benefits for nonreligious publications or groups, and because it effectively endorses religious belief, the exemption manifestly fails [the *Lemon*[2] test]"), *Hobbie v. Unemployment Appeals Comm'n of Fl.*, 480 U.S. 136, 145 (1987) ("This Court has long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause.").

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[2] *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

Other courts have read this Court's cases that prohibit the judiciary from deciding religious doctrine or belief, *e.g., Serbian Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976); *Watson v. Jones,* 80 U.S. 679 (1871), as though this Court has established a principle of complete autonomy from the law. This is a gross exaggeration of existing precedent.

1. Free Exercise Doctrine

Under the reasoning of this Court's landmark free exercise decision in *Employment Division v. Smith,* the First Amendment's Free Exercise Clause does not stand as a bar to the application of neutral, generally applicable laws to religious entities. 494 U.S. at 879. *See Smith,* 494 U.S. at 882 ("Our cases do not at their farthest reach support the proposition that a stance of conscientious opposition relieves an objector from any colliding duty fixed by a democratic government.") (internal quotations omitted) (quoting *Gillette v. United States,* 401 U.S. 437, 461 (1971)).

This Court explained in *Smith* that legislative accommodation can be permissible, but that it is not mandated by the First Amendment. 494 U.S. at 882-883. A number of courts have ruled that the Religion Clauses require significantly more accommodation. *See, e.g., McClure v. Salvation Army,* 460 F.2d 553, 558 (5th Cir. 1972); *Rayburn v. Gen. Conf. of Seventh Day Adventists,* 772 F.2d 1164, 1166 (4th Cir. 1985). They rely primarily on this Court's decisions prohibiting courts from dictating a religious organization's

religious beliefs or doctrine, including *Serbian Orthodox Diocese v. Milivojevich,* 426 U.S. 696 (1976); *Kedroff v. Saint Nicholas Cathedral,* 344 U.S. 94 (1952); *Gonzalez v. Roman Catholic Archbishop,* 280 U.S. 1 (1929); and *Watson v. Jones,* 80 U.S. 679 (1871). But they have taken that rule far afield and read this Court's prohibition on judicial *determination* of religious belief as *carte blanche* for religious institutions to avoid the anti-discrimination laws – even if the decision might not be related to religious belief. For example, Judge Richard Posner recently declared that "[e]ven if a suit does not involve an issue of religious doctrine, but concerns merely the governance structure of the church, the courts will not assume jurisdiction if doing so would interfere with the church's management." *Tomic v. Catholic Diocese of Peoria,* 442 F.3d 1036 (7th Cir. 2006), *cert. denied,* 127 S. Ct. 190 (2006).

Few have taken into account this Court's holding in *Bob Jones University v. United States,* 461 U.S. 574 (1983), that the federal government has a compelling interest in eradicating racial discrimination and, therefore, may go so far as to deny tax exempt status for engaging in such discrimination – even when that discrimination is solidly based on religious belief.

This Court desperately needs to address whether Religion Clause precedents mandate absolute immunity from employment laws for religious institutions, or whether employment laws can be applied to religious entities when the disputed employment decision is not based on religious belief, as held by the New

Jersey Supreme Court in *McKelvey v. Pierce,* 800 A.2d 840 (N.J. 2002).

2. Establishment Clause Doctrine

While religious accommodation may be permissible, it can also exceed the limits of the Establishment Clause. This Court explicitly identified this principle in *Texas Monthly*, which held that "[i]t is part of our settled jurisprudence that 'the Establishment Clause prohibits government from abandoning secular purposes in order to put an imprimatur on one religion, or on religion as such, or to favor the adherents of any sect or religious organization.'" 489 U.S. at 8-9 (quoting *Gillette v. United States,* 401 U.S. 437, 450 (1971)). This Court further held that "the Establishment Clause is infringed when the government makes adherence to religion relevant to a person's standing in the political community." *Texas Monthly*, 489 U.S. at 9 (quoting *Lynch v. Donnelly,* 465 U.S. 668, 688 (1984) (O'Connor, J., concurring)). This reasoning casts strong doubt on the constitutionality of the absolute immunity theory of the ministerial exception to employment statutes as set out below. *Cf. E.E.O.C. v. First Baptist Church,* No. S91-179M, 1992 U.S. Dist. LEXIS 14479, at *32 (N.D. Ind. June 8, 1992) (holding application of a ministerial exception to The Equal Pay Act unconstitutional under *Texas Monthly*). Yet, the courts addressing whether there should be a ministerial exception have not taken *Texas Monthly* into account, let alone accounted for how their expansive reading of religious entities'

rights to discriminate could be squared with *Texas Monthly*.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests this Court GRANT the petition for writ of certiorari. There is a split among the federal appellate circuits and state supreme courts over whether the First Amendment mandates immunity from employment statutes for religious organizations with respect to their ministerial employees. Some courts have interpreted the First Amendment to provide absolute immunity, and, therefore, barred the judiciary from examining whether an employment decision affecting clergy was religiously motivated. Others have read the First Amendment to permit a sincerity or pretext analysis to determine whether the employment decision was religiously motivated. This case is a particularly good candidate for this Court to consider the scope and appropriateness of a ministerial exception as the statute at issue has no express limitation with respect to religious employers and

therefore a "ministerial exception" can only exist under the precepts of the First Amendment.

Respectfully submitted,

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954 So.2d 640

District Court of Appeal of Florida, Third District.

ARCHDIOCESE OF MIAMI, INC., Petitioner,

v.

Yolanda G. MIÑAGORRI, Respondent.

No. 3D06-3015.

March 14, 2007.

Rehearing Denied May 18, 2007.

J. Patrick Fitzgerald and Roberto J. Diaz, Miami; Gaebe, Mullen, Antonelli, Esco & Dimatteo and Benjamin M. Esco, Coral Gables, for petitioner.

Eddy O. Marban, for respondent.

Before RAMIREZ, WELLS, and LAGOA, JJ.

WELLS, Judge.

The Archdiocese of Miami, Inc. seeks to prohibit the court below from entertaining Yolanda Miñagorri's whistleblower claim stemming from an altercation between Miñagorri and her immediate supervisor. *See* §§ 448.101-.105, Fla. Stat. (2006) (Florida's Private Sector Whistleblower Act). We grant relief but withhold our writ on the assumption that the court below will comply with this opinion.

Miñagorri's complaint alleges that in August 2005, while the principal of St. Kevin Catholic School, Miñagorri was assaulted and battered when Father Jesus Saldaña, her immediate supervisor, grabbed her by the arm and verbally threatened her. According to

Miñagorri, when she complained to the Archdiocese about Father Saldaña's behavior, the Archdiocese retaliated by terminating her employment.

In count II of her four count complaint, Miñagorri makes a Private Sector Whistleblower Act claim under section 448.102(3), which prohibits employers from taking retaliatory action against employees who object to or refuse to participate in activities, policies or practices of the employer which are "in violation of a law, rule, or regulation." § 448.102(3), Fla. Stat. (2006). Miñagorri seeks equitable and monetary relief provided under the Act, including front pay and reinstatement to her position. § 448.103(2), Fla. Stat. (2006). The Archdiocese claims that the court below lacks subject matter jurisdiction to entertain this claim under the First Amendment's bar against secular court review of religious policy and administration. We agree.

The First Amendment to the United States Constitution, in pertinent part, provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. Const. amend. I. In *Watson v. Jones,* 80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (1871), the United States Supreme Court interpreted this clause as placing matters of church government and administration beyond the purview of civil authorities:

> [W]henever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law

> have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.

Id. at 727; *McClure v. Salvation Army,* 460 F.2d 553, 559 (5th Cir.1972).

This interpretation, known as the "ecclesiastical abstention doctrine," precludes courts from exercising jurisdiction where an employment decision concerns a member of the clergy or an employee in a ministerial position:

> The First Amendment and the ecclesiastical abstention doctrine preclude civil courts from inquiring into ecclesiastical matters. Courts may not consider employment disputes between a religious organization and its clergy because such matters necessarily involve questions of internal church discipline, faith, and organization that are governed by ecclesiastical rule, custom, and law. *See Gonzalez v. Roman Catholic Archbishop of Manila,* 280 U.S. 1, 16, 50 S.Ct. 5, 74 L.Ed. 131 (1929); *see also Gellington v. Christian Methodist Episcopal Church, Inc.,* 203 F.3d 1299, 1304 (11th Cir.2000).

Se. Conference Ass'n of Seventh-Day Adventists, Inc. v. Dennis, 862 So.2d 842, 843-44 (Fla. 4th DCA 2003); *see McClure,* 460 F.2d at 558-60 (confirming that the

ecclesiastical abstention doctrine enunciated in *Watson* precludes secular court review of employment decisions concerning a church and its minister).

Thus, where, as here, a claim challenges a religious institution's employment decision, the inquiry is whether the employee is a member of the clergy or serves a ministerial function. *See Alicea-Hernandez v. Catholic Bishop of Chicago,* 320 F.3d 698, 703-04 (7th Cir.2003). If so, secular review is generally precluded:

The ministerial exception, a doctrine rooted in the First Amendment's guarantees of religious freedom, precludes subject matter jurisdiction over claims involving the employment relationship between a religious institution and its ministerial employees, based on the institution's constitutional right to be free from judicial interference in the selection of those employees. *See generally Serbian E. Orthodox Diocese for the U.S. and Can. v. Milivojevich,* 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976); *Lewis v. Seventh Day Adventists Lake Region Conference,* 978 F.2d 940 (6th Cir.1992).

Hollins v. Methodist Healthcare, Inc., 474 F.3d 223, 225 (6th Cir.2007); *see also Alicea-Hernandez,* 320 F.3d at 703 (the church need not proffer any religious justification for constructive termination of ministerial employee because "[t]o rule otherwise would enmesh the court in endless inquiries as to whether each discriminatory act was based in Church doctrine or simply secular animus"); *EEOC v. Roman*

Catholic Diocese of Raleigh, N.C., 213 F.3d 795, 801 (4th Cir.2000) (finding that "[t]he exception precludes any inquiry whatsoever into the reasons behind a church's ministerial employment decision" and that "[t]he church need not . . . proffer any religious justification for its decision"); *Rayburn v. Gen. Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1169 (4th Cir.1985) (while it is important to determine if the employee holds a ministerial position, a court "may not then inquire whether the reason for [the ministerial employee's] rejection had some explicit grounding in theological belief" because "the free exercise clause of the First Amendment protects the act of a decision rather than a motivation behind it"); *Powell v. Stafford*, 859 F.Supp. 1343, 1348 (D.Col.1994) (concluding that the church did not have to prove that it terminated a ministerial employee for a "religious reason" because "religious organizations have a *per se* right to select its ministerial employees"); *Goodman v. Temple Shir Ami, Inc.*, 712 So.2d 775, 777 (Fla. 3d DCA 1998) (concluding that "[i]nquiring into the adequacy of the religious reasoning behind the dismissal of a spiritual leader is not a proper task for a civil court").

In this case, the parties concede that Miñagorri is a ministerial employee. Although the ministerial exception has most often been raised in response to employment discrimination claims under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. § 2000e et seq., which specifically bars discrimination

on the basis of religion, it has also been applied to claims under the Americans with Disabilities Act of 1990(ADA), 42 U.S.C. § 12101 et seq, and the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 621 et seq., as well as to common law claims brought against a religious employer. *See, e.g., Ogle v. Church of God,* 153 Fed.Appx. 371 (6th Cir.2005) (applying ministerial exception to breach of contract and a number of tort claims); *Werft v. Desert Sw. Annual Conference of United Methodist Church,* 377 F.3d 1099, 1100 n. 1 (9th Cir.2004) (Title VII and ADA claims, noting that "[j]ust as there is a ministerial exception to Title VII, there must also be one to any federal or state cause of action that would otherwise impinge on the Church's prerogative to choose its ministers"); *Starkman v. Evans,* 198 F.3d 173 (5th Cir.1999) (applying ministerial exception to ADA and state anti-retaliatory statute claims); *Minker v. Baltimore Annual Conference of United Methodist Church,* 894 F.2d 1354 (D.C.Cir.1990) (applying ministerial exception to ADEA claim); *Hutchison v. Thomas,* 789 F.2d 392 (6th Cir.1986) (applying ministerial exception to common law fraud, defamation, breach of contract and tort claims). We see no reason why the ministerial exception should not be applied to the instant whistleblower claim. *See Malichi v. Archdiocese of Miami,* 945 So.2d 526, 528 (Fla. 1st DCA 2006) (finding that the Free Exercise Clause of the First Amendment precluded judicial review of a priest's workers' compensation claim because it constituted an internal employment dispute between

a priest and his church); *Dennis,* 862 So.2d at 843 (barring the trial court from exercising jurisdiction over a negligence claim brought against the church by its own pastor who claimed that the church had failed to adequately follow its own internal procedures when suspending him in response to allegations that he had made "unwelcome, sexually-suggestive overtures" to a member of the church's congregation); *see also Alicea-Hernandez,* 320 F.3d at 700 (communications manager for church precluded from bringing charge of discrimination based on national origin and gender under Title VII after she was allegedly constructively discharged from her employment by the church); *Roman Catholic Diocese of Raleigh, N.C.,* 213 F.3d at 797 (EEOC precluded from bringing claims of gender discrimination and retaliation under Title VII against the church on behalf of a music teacher who was not hired for a newly created music director position); *Rayburn,* 772 F.2d at 1164 (white female member of church precluded from bringing sex and race discrimination claims under Title VII after she was denied a pastoral position in the church); *Shaliehsabou v. Hebrew Home of Greater Washington, Inc.,* 247 F.Supp.2d 728, 728 (D.Md.2003) (kosher supervisor precluded from bringing an action against a Jewish elder care facility under state's wage and hour law and the Fair Labor Standards Act for unpaid overtime wages); *Powell,* 859 F.Supp. at 1345 (teacher at a Catholic high school precluded from bringing an ADEA age discrimination claim after the church failed to renew his employment contract);

Pardue v. Center City Consortium Schs. of the Archdiocese of Washington, Inc., 875 A.2d 669, 671 (D.C.2005) (Catholic school principal precluded from bringing race discrimination and retaliation claims under the District of Columbia Human Rights Act after the church constructively terminated her employment contract); *Goodman*, 712 So.2d at 777 (affirming dismissal of rabbi's suit for non-renewal of his employment contract and defamation); *Sabatino v. Saint Aloysius Parish*, 288 N.J.Super. 233, 235, 672 A.2d 217 (1996) (female principal of a parochial elementary school precluded from bringing gender discrimination, breach of contract and tort claims after she was not hired as principal of a new school by the church). Moreover, allowing the whistleblower claim to proceed would especially run afoul of the First Amendment because the requested remedy of reinstatement would require the Archdiocese to employ Miñagorri, a concededly ministerial employee.

Accordingly, we grant relief with the writ withheld.[1]

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[1] In light of this holding, we do not address whether Miñagorri has stated a claim under the Private Sector Whistleblower Act. We also find Miñagorri's whistleblower claim distinguishable from third-party tort actions brought by parishioners against their respective churches based upon alleged sexual misconduct by a clergy member, *see Doe v. Evans*, 814 So.2d 370 (Fla.2002) and *Malicki v. Doe*, 814 So.2d 347 (Fla.2002), for the same reasons set forth by the First District in *Malichi*:

> Although we find that this court lacks jurisdiction to consider Appellant's claim, we acknowledge our supreme court's holdings that permit third parties to file negligent-hiring and negligent supervision claims against hierarchical churches. We find Appellant's claim distinguishable from both *Evans* and *Malicki* because Appellant's claim would excessively entangle civil courts in the resolution of a completely internal church matter involving no third parties.

Malichi, 945 So.2d at 532 (citations omitted); *see also Rapp v. Jews for Jesus, Inc.*, 944 So.2d 460, 464 (Fla. 4th DCA 2006) (finding that the First Amendment did not bar the plaintiff's third-party tort claims based upon *Malicki* where "[n]one of the tort claims in this case flowed from an employment dispute between a church and a member of the clergy").

985 So.2d 1086

Supreme Court of Florida.
Yolanda G. MINAGORRI, Petitioner,
v.
ARCHDIOCESE OF MIAMI, INC., Respondent.
No. SC07-1171.

July 3, 2008.

Application for Review of the Decision of the District Court of Appeal – Constitutional Construction, Third District – Case No. 3D06-3015 (Dade County).

George T. Reeves of Davis, Schnitker, Reeves, and Browning, P.A., Madison, FL, Eddy O. Marban of the Law Office of Eddy O. Marban, Miami, FL, and Andrew Joseph Decker, IV of the Decker Law Firm, Live Oak, FL, for Petitioner.

Robert S. Glazier of the Law Office of Robert S. Glazier, Miami, FL, and Roberto J. Diaz and Maura Fitzgerald Jennings of J. Patrick Fitzgerald and Associates, Coral Gables, FL, for Respondent.

PER CURIAM.

We originally accepted jurisdiction to review the decision of the Third District Court of Appeal in *Archdiocese of Miami v. Minagorri*, 954 So.2d 640, 643 (Fla. 3d DCA 2007), because the district court expressly construed a provision of the United States Constitution. *See* art. V, § 3(b)(3), Fla. Const. After further consideration, we have determined that

jurisdiction was improvidently granted. Accordingly, we hereby discharge jurisdiction and dismiss review.

It is so ordered.

QUINCE, C.J., and WELLS, ANSTEAD, PARIENTE, LEWIS, and BELL, JJ., concur.

CANTERO, J., did not participate.

Fla. Stat. Ann. § 448.101. Definitions

As used in ss. 448.101-448.105, the term:

(1) "Appropriate governmental agency" means any agency of government charged with the enforcement of laws, rules, or regulations governing an activity, policy, or practice of an employer.

(2) "Employee" means a person who performs services for and under the control and direction of an employer for wages or other remuneration. The term does not include an independent contractor.

(3) "Employer" means any private individual, firm, partnership, institution, corporation, or association that employs ten or more persons.

(4) "Law, rule, or regulation" includes any statute or ordinance or any rule or regulation adopted pursuant to any federal, state, or local statute or ordinance applicable to the employer and pertaining to the business.

(5) "Retaliatory personnel action" means the discharge, suspension, or demotion by an employer of an employee or any other adverse employment action taken by an employer against an employee in the terms and conditions of employment.

(6) "Supervisor" means any individual within an employer's organization who has the authority to direct and control the work performance of the affected employee or who has managerial authority to

take corrective action regarding the violation of law, rule, or regulation of which the employee complains

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Fla. Stat. Ann. § 448.102. Prohibitions

An employer may not take any retaliatory personnel action against an employee because the employee has:

(1) Disclosed, or threatened to disclose, to any appropriate governmental agency, under oath, in writing, an activity, policy, or practice of the employer that is in violation of a law, rule, or regulation. However, this subsection does not apply unless the employee has, in writing, brought the activity, policy, or practice to the attention of a supervisor or the employer and has afforded the employer a reasonable opportunity to correct the activity, policy, or practice.

(2) Provided information to, or testified before, any appropriate governmental agency, person, or entity conducting an investigation, hearing, or inquiry into an alleged violation of a law, rule, or regulation by the employer.

(3) Objected to, or refused to participate in, any activity, policy, or practice of the employer which is in violation of a law, rule, or regulation.

Fla. Stat. Ann. § 448.103. Employee's remedy; relief

(1)(a) An employee who has been the object of a retaliatory personnel action in violation of this act may institute a civil action in a court of competent jurisdiction for relief as set forth in subsection (2) within 2 years after discovering that the alleged retaliatory personnel action was taken, or within 4 years after the personnel action was taken, whichever is earlier.

(b) Any civil action authorized under this section may be brought in the county in which the alleged retaliatory personnel action occurred, in which the complainant resides, or in which the employer has its principal place of business.

(c) An employee may not recover in any action brought pursuant to this subsection if he or she failed to notify the employer about the illegal activity, policy, or practice as required by s. 448.102(1) or if the retaliatory personnel action was predicated upon a ground other than the employee's exercise of a right protected by this act.

(2) In any action brought pursuant to subsection (1), the court may order relief as follows:

(a) An injunction restraining continued violation of this act.

(b) Reinstatement of the employee to the same position held before the retaliatory personnel action, or to an equivalent position.

(c) Reinstatement of full fringe benefits and seniority rights.

(d) Compensation for lost wages, benefits, and other remuneration.

(e) Any other compensatory damages allowable at law.

Fla. Stat. Ann. § 448.104. Attorney's fees and costs

A court may award reasonable attorney's fees, court costs, and expenses to the prevailing party.

Fla. Stat. Ann. § 448.105. Existing rights

This act does not diminish the rights, privileges, or remedies of an employee or employer under any other law or rule or under any collective bargaining agreement or employment contract.